STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 12, 2012
v	No. 303017 Isabella Circuit Court
RODNEY LEE CROTON, Defendant-Appellant.	LC No. 2010-001723-FH

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

Defendant pleaded no contest to one count of unlawful use of a motor vehicle, MCL 750.414. He was sentenced as a second-habitual offender, MCL 769.10, to one year in jail, with 91 days of credit for time served, along with one year of probation, commencing the same date as his jail sentence. The trial court also imposed attorney fees and costs. Defendant appeals as of right, challenging the imposition of a $350 attorney fee on the basis that the trial court did not engage in an ability-to-pay assessment. We affirm.

Defendant pled no contest to the crime on December 16, 2010. He was sentenced on January 28, 2011, with the court ordering defendant to pay the $350 attorney fee that very same day. Defendant did not object to the payment of the attorney fee. An accompanying order of probation was also signed by the trial court on January 28, 2011. As a condition of probation, defendant was required to pay the $350 attorney fee. On February 15, 2011, defendant executed an acceptance provision located on the bottom of the probation order, which provided, "I understand and agree to comply with this order." Also, in conjunction with the probation order, there is no indication in the record that defendant took advantage of the opportunity to petition the trial court under MCL 771.3(6)(b) (probation conditions) for remission of the attorney fee requirement due to manifest hardship. Furthermore, despite the order in the judgment of sentence to immediately pay attorney fees, there is no indication in the record that the trial court has attempted to enforce the payment of fees or otherwise punish defendant for nonpayment.

Defendant cites *People v Dunbar*, 264 Mich App 240; 690 NW2d 476 (2004), in arguing that the trial court erred in imposing attorney fees at sentencing without taking into consideration his ability to pay the fees and the fact that he was indigent. In *People v Jackson*, 483 Mich 271, 275; 769 NW2d 630 (2009), our Supreme Court concluded that "*Dunbar* was incorrect to the

extent that it required a court to conduct an ability-to-pay analysis before imposing a fee for a court-appointed attorney[.]" The *Jackson* Court held:

> Indeed, *whenever* a trial court attempts to enforce its imposition of a fee for a court-appointed attorney under MCL 769.1k, the defendant must be advised of this enforcement action and be given an opportunity to contest the enforcement on the basis of his indigency. Thus, trial courts should not entertain defendants' ability-to-pay-based challenges to the imposition of fees until enforcement of that imposition has begun. [*Id.* at 292 (emphasis in original).]

In *Jackson*, the Court noted that "[t]he defendant here has never had his sentence changed, increased, or amended because of his inability to pay a fee for his court-appointed attorney." *Id.* at 287. In the case at bar, the same is true – the record reveals that there has been no enforcement action by the court. Moreover, there is no indication in the record that defendant has been accused of a probation violation as a result of the nonpayment of attorney fees. Finally, defendant's affirmative statement that he understood and agreed to comply with the terms of probation, including the attorney fee condition, constitutes a waiver of his appellate argument. *People v Carter*, 462 Mich 206, 215, 219; 612 NW2d 144 (2000). To the extent that defendant's financial circumstances have changed since the waiver and the trial court actually attempts to enforce the payment of attorney fees, the court is to abide by *Jackson*.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter